

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR KENT COUNTY

STATE OF DELAWARE,	:	
	:	Case No. 0601011309
vs.	:	
	:	
James W. Biddle	:	
	:	
Defendant.	:	

**Upon Defendant's Motion to Suppress**

**Submitted: May 23, 2006**

**Decided: May 26, 2006**

**Defendant's motion is denied.**

Cari Van Dyke, Esquire, Department of Justice, 102 West Water Street, Dover, Delaware 19904, attorney for the State

Kevin M. Howard, Esquire, Young, Malmberg & Howard, P.A., 30 The Green, Dover, Delaware, 19901, attorney for the Defendant.

Trader, J

In this driving under the influence case, I conclude there is sufficient trustworthy and factual information to warrant a reasonable person to conclude that probable cause existed to believe that the defendant was driving under the influence of alcohol at the time he was stopped by Cpl. Bishop. Accordingly, the motion to suppress is denied.

On January 12, 2006, the defendant, James W. Biddle, was driving a red Mitsubishi southbound on U.S. Route 13. He was clocked on stationary radar at a speed of 95 M.P.H. in a 55 M.P.H. zone. The defendant went through a flashing red light without stopping and stopped his vehicle at a Shore Stop in Canterbury, Delaware. He exited his vehicle and was almost at the door of the Shore Stop when the police officer stopped him. Cpl. Bishop smelled a strong odor of alcoholic beverage on the defendant's breath, and noticed that the defendant had a red face and bloodshot, glassy eyes. The defendant admitted that he had been drinking. Cpl. Bishop administered the alphabet test to the defendant and he was instructed to recite the letters from "e" to "p". The defendant responded, "Do you want me to recite letters backwards or forwards?" In response to further instructions, the defendant stated, "Is this a special way of counting?" He then recited the letters correctly from "e" to "p". Cpl. Bishop requested that he perform the counting test and recite numbers from 68 to 47. The defendant recited the numbers correctly, but he paused at 54 and he thought that he was supposed to stop at that number. Cpl. Bishop concluded that the defendant failed the alphabet test, but that he passed the counting test. The other coordination tests were not offered because of the defendant's disabilities. Cpl. Bishop was convinced that the defendant was too impaired to operate an automobile and placed him under arrest.

The defendant has filed a motion to suppress the evidence of the intoxilyzer results, contending that the officer did not have probable cause to believe that the defendant was driving under the influence of alcohol. I disagree.

Under 21 Del. C. Sec. 2740, a blood or breath test to determine the presence of alcohol may be performed when an officer has probable cause to believe a person was driving a vehicle in violation of Sec. 4177. Probable cause lies somewhere between suspicion and sufficient evidence to convict. *Hovington v. State*, 616 A.2d 829 (Del. 1992). Furthermore, it is only the probability and not a *prima facie* showing of criminal activity that is the standard of probable cause. *Illinois v. Gates*, 462 U.S. 213 (1983).

The leading case in Delaware on probable cause is *State v. Maxwell*, 624 A.2d 926 (Del. 1993). *Maxwell* held “To establish probable cause, the police are only required to present facts which suggest, when those facts are viewed under the totality of the circumstances, that there is a fair probability that the defendant has committed a crime.” *Id.* at 930. Applying the principles of *Maxwell* to the case before me, I find that the police officer had probable cause to arrest the defendant for driving under the influence. The record reflects that Cpl. Bishop smelled a strong odor of alcoholic beverage on the defendant’s breath. The defendant admitted he had consumed alcoholic beverages before driving. Cpl. Bishop observed that the defendant had glassy and bloodshot eyes and a red face. The defendant was driving 95 M.P.H. on a wet road at night. He failed one of the two field sobriety tests and he was confused as to both tests. Although any of the above factors in isolation may be insufficient to establish probable cause, the totality of the circumstances supports a probable cause determination.

The following cases are illustrative of the quantum of evidence required for probable cause. *Glass v. State*, 1988 Del. LEXIS 170 (Del. June 13, 1988) held that an accident, an odor of alcohol on defendant's breath, and defendant's confused and disoriented state were sufficient to establish probable cause. In *State v. Otto*, 1993 Del. Super. LEXIS 339 (Del. Super. Nov. 12, 1993), a defendant's smelling of alcohol, slurred speech, bloodshot eyes, and admission of visiting a bar constituted probable cause. In *State v. Bease*, 884 A.2d 495 (Del. 2005), although the Superior Court did not consider the PBT or HGN tests, evidence that the defendant smelled of alcohol, admitted he consumed alcoholic beverage the night before, had bloodshot and glassy eyes, spoke in a rapid manner to the police officer, and committed a traffic violation constituted probable cause.

The possibility that there may be a hypothetically innocent explanation for some of the facts revealed during the course of investigation does not preclude a determination that probable cause exists for an arrest. *State v. Maxwell, supra*. Furthermore, mixed results in field sobriety tests do not extinguish probable cause if other sufficient factors are present. *State v. Perrera*, 2004 Del. LEXIS 255 (Del. June 25, 2004).

Since I conclude that there was probable cause to arrest the defendant for driving under the influence, the defendant's motion to suppress is denied.

**IT IS SO ORDERED.**

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**Merrill C. Trader**  
**Judge**